

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

BOBBY JOE JOHNSON, Jr.,

Plaintiff,

-vs-

Case No. 05-C-0701

**DAVID A. SHEPHERD,
KENOSHA POLICE DEPARTMENT,
DETECTIVE RUSS BECKMAN #247,
CAPTAIN RANDY BERNER #218,
KENOSHA COUNTY DISTRICT ATTORNEYS OFFICE
DISTRICT ATTORNEY ROBERT J. JAMBOIS, and
ASSISTANT DISTRICT ATTORNEY SHELLY J. RUSCH,**

Defendants.

DECISION AND ORDER

The *pro se* plaintiff lodged a civil rights complaint under 42 U.S.C. § 1983, alleging that his civil rights were violated. By order of October 4, 2005, the court screened the plaintiff's complaint as required under 28 U.S.C. § 1915A(a) and dismissed his action on the ground that it failed to state a claim for which relief could be granted and sought monetary relief from a defendant who is immune from such relief. Judgment dismissing the action was entered by the Clerk of Court on October 4, 2005.

On October 13, 2005, the plaintiff filed a "Motion to Amend Complaint" (Docket #7) and a "Motion for Summary Judgment (Docket #8). The "certificate of mailing" accompanying the motions reveals that they were sent via mail by the plaintiff on October 7,

2005, presumably prior to the plaintiff receiving the court's order and the judgement dismissing his action.

In his motion to amend the complaint, the plaintiff asks that he be permitted to remove defendant David A. Shepherd from the complaint on the ground that he is not a "state actor" under 28 U.S.C. §1983. In view of the court's order of October 4, 2005, dismissing his action in its entirety, this motion will be denied as moot.

The plaintiff's motion for summary judgment, which is brought pursuant to Rule 56, Federal Rules of Civil Procedure, seeks judgment in the plaintiff's favor on the ground that the defendants "failed to respond to the summons within a timely manner" Contrary to the defendant's assumption, the defendants were never served with a summons or the complaint much less required to respond to those documents. This is so because his complaint did not survive the screening process under §1915A and was dismissed. Therefore, the plaintiff's motion for summary judgment will be denied.

ORDER

IT IS THEREFORE ORDERED that the plaintiff's "Motion to Amend Complaint" (Docket #7) is **DENIED**, as moot.

IT IS FURTHER ORDERED that the plaintiff's "Motion for Summary Judgment" (Docket # 8) be and hereby is **DENIED**.

Dated at Milwaukee, Wisconsin, this 8th day of November, 2005.

SO ORDERED,

s/ Rudolph T. Randa
HON. RUDOLPH T. RANDA
Chief Judge